

ENTERED

February 12, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MARY GOODEN,

Plaintiff,

VS.

L. KELLER MACKIE, *et al.*,

Defendants,

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CIVIL ACTION NO. H-19-2948

ORDER ADOPTING MEMORANDUM AND RECOMMENDATION

This court has reviewed the Memorandum and Recommendation of Judge Christina Bryan signed on January 22, 2020, (Docket Entry No. 23), and made a *de novo* determination. Rule 72(b), Fed. R. Civ. P.; 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989). Based on the pleadings, the record, and the applicable law, the court adopts the Memorandum and Recommendation as this court's Memorandum and Order. This court finds and concludes that the defendants' motions to dismiss were properly granted.

Judge Bryan's recommendation to dismiss Gooden's claims without prejudice against Governor Abbot, Attorney General Paxton, Andrew Cecere, and the Mackie defendants, as improperly joined parties, is consistent with and supported by the applicable legal standards and with the allegations in the complaint. Judge Bryan's recommendation to dismiss with prejudice Gooden's claims for breach of fiduciary duty, equitable redemption, "separating the collateral from the mortgage," undue influence, and injunctive relief, against SPS and U.S. Bank, and Timothy O'Brien for SPS, is consistent with and supported by the applicable legal standards and with the allegations in the complaint. Judge Bryan's recommendation to dismiss Gooden's fraud claims without prejudice, with 14 days to amend, is consistent with and supported by the

applicable legal standards and with the allegations in the complaint. The defendants' motions to dismiss, (Docket Entry Nos. 9, 12), is granted. The Mackie defendants' motion to dismiss, (Docket Entry No. 5), is denied as moot.

One claim remains. That is the fraud claim that Judge Bryan recommended dismissing with leave to amend. Gooden has amended. (Docket Entry No. 24). If a motion to dismiss the amended complaint is filed, it will be covered by the referral to Judge Bryan for memorandum and recommendation on resolution. The initial conference is reset for **April 2, 2020, at 5:00 p.m.**

SIGNED on February 12, 2020, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", written over a horizontal line.

Lee H. Rosenthal
Chief United States District Judge